UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,198	06/06/2001	Tom McGee	US 010136	9113

24737   7590   01/23/2009
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER
SHANG, ANNAN Q

ART UNIT	PAPER NUMBER
2424	

MAIL DATE	DELIVERY MODE
01/23/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte TOM MCGEE, NEVENKA DIMITROVA,
and LALITHA AGNIHOTRI

_____

Appeal 2008-4969
Application 09/876,198
Technology Center 2400

_____

Decided: January 23, 2009

_____

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO
and, ELENI MANTIS MERCADER, *Administrative Patent Judges.*

MANTIS MERCADER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-25. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

INVENTION

Appellants' claimed invention is directed to obtaining from a catalog of electronic programming information including values representing characteristics data at the start and end times of a selected program, storing those values, and monitoring incoming video to record the selected program when the characteristics data of the incoming video match the stored values (Spec. 2:8-23 and Fig. 1).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method of processing a catalog of electronic programming information containing information for at least one program, said information including a start time and an end time of said at least one program, said method comprising:

obtaining from said at least one program a first value representing characteristics data of said at least one program at said start time; and

storing said first value in said catalog; and

obtaining from said at least one program a second value representing characteristics data of said at least one program at said end time; and

storing said second value in said catalog;

when a user selects said at least one program for a future use by a device with a program input, copying said first value and said second value to said device;

2

comparing said first value and said second value to corresponding values obtained from said program input to determine a start and stop time for said future use.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Dimitrova	US 6,100,941	Aug. 08, 2000
Alexander	US 6,177,931 B1	Jan. 23, 2001 (filed Jul. 21, 1998)

The following rejections are before us for review:

1. The Examiner rejected claims 1-4, 8, 10-14, 18, 20, and 22-25 under 35 U.S.C. § 102(e) as being anticipated by Alexander.

2. The Examiner rejected claims 5-7, 9, 15-17, 19 and 21[1] under 35 U.S.C. § 103(a) as being unpatentable over Alexander in view of Dimitrova.

ANTICIPATION
ISSUE

Claims 1-4, 8, 10-14, 18, 20, and 22-25

Appellants contend *inter alia* that Alexander "is silent regarding obtaining such data from a television program itself, let alone obtaining values representing

---

[1] The Final Rejection lists claim 21 as being unpatentable under 35 U.S.C. § 103(a) (Final Rej. 9) and Appellants address claim 21 in the Brief (Br. 4-8). Thus, we consider the exclusion of this claim under the grounds of rejection (Ans. 3) as inadvertent error.

characteristic data of at least one program at start and end times from the program"
as recited in claim 1 (Br. 6).

The Examiner responded that Alexander teaches a Television Receiver
(TVR) 10 or 24, which obtains from at least one program packets of EPG data
representing characteristics data of at least one program (i.e., date, start time/end
time, duration, etc.), which Examiner construed as the claimed first value, and
monitoring received EPG data for scheduling updates, which Examiner construed
as the claimed second value (Ans. 3 and Final Rej. 6). The Examiner further stated
that Alexander teaches that the TVR-10 or EPG microprocessor monitors in real-
time or on an ongoing basis the packets of EPG data received for changes in the
schedule information (date, start time/end time, duration, etc.) and upon receiving a
packet of scheduling updates the microprocessor compares these values to
determine the appropriate recording duration (or start time/end time) for recording
the program and automatically updates the recording list to meet these changes
(Ans. 3-4). Furthermore, the Examiner states that "the data packets transmitted in
the VBI, including data packets representing changes as to the program schedule
are parts of the TV program" (Ans. 4).

The issue before us, then, is as follows:

Have the Appellants shown that the Examiner erred by determining that
Alexander teaches "a first value representing characteristics data . . . at said start
time . . . and . . . a second value representing characteristics data at said end time"
as recited in independent claim 1?

FINDINGS OF FACT

The relevant facts include the following:

1. Alexander teaches that scheduling update packet information is transmitted to the viewer's television over the vertical blanking interval (VBI), and the Electronic Programming Guide (EPG) detects the VBI scheduling updates and accordingly updates the recording list of the programs of interest (col. 11, l. 64-col. 12, l. 9 and col. 8, ll. 50-52).

2. Alexander teaches that EPG detects changes in program scheduling for a particular title designated for recording and updates the recording list following a program that may run longer (i.e., sports event) (col. 11, l. 64-col. 12, l. 9).

3. Alexander teaches that the transmitted video information will include values such as changes in audio content (i.e., including changes in announcers, changes in speed, and topical words) (col. 12, ll. 30-43).

4. Alexander teaches that the audio content is used to index already recorded information (col. 12, ll. 10-43).

PRINCIPLES OF LAW

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc., v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

*Have Appellants shown that the Examiner erred by determining that
Alexander teaches "a first value representing characteristics data . . . at
said start time . . . and . . . a second value representing characteristics data
at said end time" as recited in independent claim 1?*

Alexander teaches that scheduling update packet information is transmitted
to the viewer's television over the vertical blanking interval (VBI), and the
Electronic Programming Guide (EPG) detects the VBI scheduling updates (i.e.,
television program updates) and accordingly updates the recording list of the
programs of interest (Finding of Fact 1). Alexander teaches that EPG detects
changes in program scheduling for a particular title designated for recording and
updates the recording list following a program that may run longer (i.e., sports
event) (Finding of Fact 2). Thus, the updated program schedule is based solely on
the *title of the program* (emphasis added). The Examiner's construction of the
updated program schedule as "a second value" is misplaced. Even if we assume
that the start/end time or duration of the program associated with the title of the
program constitute "a second value," the claim does not merely recite "a second
value," but rather, "a second value representing characteristics data of said at least
one program *at said end time*" of that program (emphasis added). The Examiner
did not articulate what feature in Alexander constitutes "a second value
representing characteristics data of said at least one program *at said end time*"
(emphasis added).

Furthermore, we note that Alexander teaches in a separate embodiment that
the transmitted video information will include values (i.e., "signature" information)
such as changes in audio content (i.e., including changes in announcers, changes in

speed, and topical words) (Finding of Fact 3). However, these values are not compared to determine "a start and stop time" for a future recording as claimed in independent claim 1, but rather, to index already recorded information (Finding of Fact 4). Thus, Alexander is further silent as to "comparing said first value and said second value to corresponding values obtained from said program input to determine a start and stop time for said future use" as claimed in independent claim 1.

For the above reasons, Appellants have shown error in the Examiner's rejection of independent claim 1 under 35 U.S.C. § 102(e) as well as independent claims 11 and 22 which recite commensurate limitations. For similar reasons, we are likewise persuaded of error in the Examiner's rejection of dependent claims 2-4, 8, 10, 12-14, 18, 20, and 23-25.

CONCLUSION

Appellants have shown that the Examiner erred by determining that Alexander teaches "a first value representing characteristics data . . . at said start time . . . and . . . a second value representing characteristics data at said end time" as recited in independent claim 1. For similar reasons, we are likewise persuaded of error in the Examiner's rejection of independent claims 11 and 22, as well as dependent claims 2-4, 8, 10, 12-14, 18, 20, and 23-25.

OBVIOUSNESS
ISSUE

Claims 5-7, 9, 15-17, 19, and 21

The issue is whether Dimitrova cures Alexander's deficiencies as stated *supra* under the Anticipation Analysis. More specifically, the issue is whether the Examiner erred by determining that the Alexander and Dimitrova combination teaches "recording an incoming signal when the signature of the incoming signal matches the signature of the start time within the obtained signature; and terminating recording of the incoming signal when the signature of the incoming signal matches the signature of the end time within the obtained signature" as claimed.

FINDINGS OF FACT

The relevant facts include the following:

5. Dimitrova teaches comparing values (i.e., the start time signature and the end time signature) of an incoming signal (col. 5, ll. 12-15) with start and end-time signatures obtained for a selected program (i.e., a commercial; and col. 17, l. 50-col. 18, l. 18) to determine "a start and stop time" of that commercial (col. 2, ll. 10-63).

6. Dimitrova teaches that "[i]f no buffering is performed, the initial portions of a commercial will be recorded and the initial portions of a program following a commercial will not be recorded" because processing is required to determine a change between a program and a commercial (col. 19, l. 67-col. 20, l. 5).

7. Dimitrova's invention is directed to detecting commercials in an incoming signal and performing post-processing of the recording to either skip them or substitute them with alternate content (last sentence of Abstract and col. 19, ll. 49-60).

PRINCIPLES OF LAW

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Supreme Court, citing *In re Kahn*, 441 F.3d at 988, stated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007).

ANALYSIS

Did the Examiner err by determining that the Alexander and Dimitrova combination teaches "recording an incoming signal when the signature of the incoming signal matches the signature of the start time within the obtained signature; and terminating recording of the incoming signal when the signature of the incoming signal matches the signature of the end time within the obtained signature" as claimed?

Dimitrova teaches comparison of values (i.e., the start time signature and the end time signature) of an incoming signal with start and end-time signatures obtained for a selected program (i.e., a commercial) to determine "a start and stop time" of that commercial (Finding of Fact 5). However, Dimitrova does not teach

9

recording an incoming signal (i.e., unbuffered signal) when the signature of the incoming signal matches the signature of the start time within the obtained signature and terminating recording of the incoming signal when the signature of the incoming signal matches the signature of the end time within the obtained signature as claimed by independent claim 21.

On the contrary, Dimitrova teaches that "[i]f no buffering is performed, the initial portions of a commercial will be recorded and the initial portions of a program following a commercial will not be recorded" because processing is required to determine a change between a program and a commercial (Finding of Fact 6). In other words, Dimitrova's invention is directed to detecting commercials in an incoming signal and performing post-processing of the recording to either skip them or substitute them with alternate content (Finding of Fact 7)--not recording them at their start and end signatures. If no buffering is performed of an incoming signal, only an initial portion of a commercial is recorded (i.e., not the entire commercial) and the initial portion of a program following the commercial is not recorded. Thus, Dimitrova does not cure Alexander's deficiency, in that while Dimitrova teaches monitoring and detecting start and end times of programs of interest of an "incoming signal," Dimitrova does not teach "*recording* an incoming signal when the signature of the incoming signal matches the signature of the start time within the obtained signature; and *terminating recording* of the incoming signal when the signature of the incoming signal matches the signature of the end time within the obtained signature" as claimed in claim 21.

For the above reasons, Appellants have shown error in the Examiner's rejection of independent claim 21 under 35 U.S.C. § 103(a). For similar reasons, we are likewise persuaded of error in the Examiner's rejection of dependent claims 5-7, 9, 15-17, and 19.

CONCLUSION

The Examiner erred by determining that the Alexander and Dimitrova combination teaches "recording an incoming signal when the signature of the incoming signal matches the signature of the start time within the obtained signature; and terminating recording of the incoming signal when the signature of the incoming signal matches the signature of the end time within the obtained signature" as claimed.

ORDER

The decision of the Examiner to reject claims 1-4, 8, 10-14, 18, 20, and 22-25 under 35 U.S.C. § 102(e) and claims 5-7, 9, 15-17, 19, and 21 under 35 U.S.C. § 103(a) is reversed.

REVERSED

ELD

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510